IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.557 OF 1990

The State of Maharashtra ...Appellant.

V/s

Chandrakant Rangnath Kulkarni,
Aged 30 years, R/o. Sakharwadi,
Tal. Phaltan, Dist. Satara ...Respondent.

Mr. D.P. Adsule, APP for the appellant - State.

Mr. M.S. Mohite with Ms. V.R. Raje for the respondent.

CORAM: V.M.KANADE,J.

DATE: 14th October, 2004.

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. Appellant - State has filed this appeal challenging the judgment and order passed by the Additional Sessions & Special Judge in Special Case No. 6 of 1987. By the said Judgment and Order dated 10/4/1990, the Trial Court acquitted the accused of the offence punishable under section 161 of the Indian Penal Code and under section 5(1)((d) read with section 5(2) of the Prevention of Corruption Act.

2. Prosecution's case is that the accused was working as Talathi at Saswad, Taluka Phalton at Satara District and he was charged for having demanded an amount of Rs 250/- as an illegal gratification and for having accepted the said amount from the complainant P.W. 1 - Balu son of Shankar Bandal on 25/3/1987 at

about 12.00 noon.

3. The complainant - P.W.1 had purchased lands between 1982 and 1984 and though the applications were made for transferring his name in the record of rights, mutation entry was not effected in his name. Prosecution's case is that though the document of Sale Deed was given to the accused, he avoided to carry out the mutation entry. P.W.1 was working in the Airforce and had come to his village on an annual leave and when he came to know that the accused had not made mutation entry and had demanded an illegal gratification for doing the said work, a complaint was lodged by P.W.1 with the Anticorruption Bureau. Thereafter, a panchanama was prepared. All the formalities were completed. Complainant Balu and Panch Bagal went to the Office of the accused along with the raiding party. The accused demanded Rs 2000/-. However, the complainant told him that he had brought only Rs 250/-. He was, therefore, asked to deposit the said amount in his desk and the accused further asked the complainant to bring the balance amount of Rs 2000/-. The complainant came out and gave signal to the raiding party who entered the office. The amount was found in the desk. However, the hands and clothes of the accused did not show that

there was any anthracene powder. No incriminating articles were found in his desk. Sanction was granted and the prosecution led evidence. The accused also examined one witness namely Vilas Zanazane - D.W.2.

4. The learned Counsel appearing on behalf of the appellant - State has taken me through the evidence on record. From the evidence of P.W.1 and P.W.3, it can be seen that the alleged demand made by the accused has not been proved. Further, even acceptance of the said amount has also not been proved by the prosecution. Money was found in the desk of the accused. No anthracene powder was found either on the hands or clothes of the accused. Accused was sitting in his office and there were other villagers in his Office and, at that time, when the raiding party entered his office, he was preparing certificate of one Vilas Zanazane who has also deposed in his evidence that there were other villagers in the Office when the complainant - P.W.1 Balu and the raiding party and panch - P.W.3 had entered the Office. P.W.1 in his evidence has stated that, initially, accused had demanded Rs 250/- as a bribe and, thereafter, had raised that demand to Rs 2000/-. This version of the complainant appears to be improbable. P.W.1 also had given signal after he came out of the Office and he

was not inside the office when the raiding party arrested the accused or inspected his desk where the alleged amount of bribe of Rs 250/- was kept by P.W.1 - Balu.

5. Further, there is a discrepancy in the evidence of P.W.1, P.W.3 and the Investigating Officer Barge. Though Barge has admitted in his cross-examination that there were other villagers who were sitting in the Office of the accused, P.W.1 and P.W.3 have stated that there was no other person in the office when the payment was made. The defence witness Vilas Zanazane has also stated in his evidence that there were other villagers in the Office when P.W.1 and P.W.3 had entered the Office. He has corroborated the testimony of Barge. Thus, the statement of Investigating Officer and the defence witness will have to be accepted, with the result the statement of P.W.1 and P.W.3 becomes doubtful as they have suppressed these facts about the presence of other villagers and have wrongly deposed that there was no person in the Office. Another circumstance which makes the prosecution story doubtful is that accused had left the Office before he started writing the certificate in the name of Shrirang Zanazane. This fact has been stated by the defence witness and the suggestion which

was made to the complainant and the P.W.3 that the accused had left the Office before he started writing the certificate in favour of Zanazane, has been denied. From this evidence, it is possible that the complainant had put the tainted money of Rs 250/- in the desk of the accused in his absence. This possibility cannot be ruled out. Thus, in my view, Prosecution has not proved its case beyond the reasonable doubt. The Trial Court has rightly acquitted the accused. There is no reason to interfere with the said order of acquittal. Appeal is, therefore, dismissed. The Order of the Trial Court is confirmed.

V.M. KANADE, J.